

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN JOE MCKENNEY**, on April 8, 2003 at  
9:00 A.M., in Room 172 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Joe McKenney, Chairman (R)  
Rep. Jim Keane, Vice Chairman (D)  
Rep. Donald Steinbeisser, Vice Chairman (R)  
Rep. Bob Bergren (D)  
Rep. Rod Bitney (R)  
Rep. Sylvia Bookout-Reinicke (R)  
Rep. Nancy Fritz (D)  
Rep. Dave Gallik (D)  
Rep. Kathleen Galvin-Halcro (D)  
Rep. Ray Hawk (R)  
Rep. Bob Lawson (R)  
Rep. Rick Maedje (R)  
Rep. Gary Matthews (D)  
Rep. Scott Mendenhall (R)  
Rep. Penny Morgan (R)  
Rep. Allen Rome (R)  
Rep. Sandy Weiss (D)  
Rep. Bill Wilson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch  
Alberta Strachan, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing & Date Posted: SB 458 (3/27/03)  
Executive Action: None

**HEARING ON SB 458**

**Sponsor:** SEN. WALTER L. McNUTT, SD 50, Sidney

**Opening Statement by Sponsor:**

**SEN. McNUTT** said this bill provides protection for ratepayers and for the shareholders of innocent third-party purchasers for the errors or omissions of a predecessor utility. It provides for successor liability where there is a continuity of shareholders or officers and directors with a successor corporation or limited liability company that is not an acquiring corporation or entity under a sale, reorganization, restructuring, or merger.

**{Tape: 1; Side: A; Approx. Time Counter: 32 - 256}**

**Proponents' Testimony:**

**Leo Berry, Northwestern Energy, Helena Attorney**, said he was one of the shareholders. The ratepayers will not pay for any erroneous decisions made by the former Board of the Montana Power Company. A bonafide purchaser, Northwestern Energy purchased the wires and poles of the Montana Power Company. If they were a purchaser of those utility assets, they cannot be sued by those utility shareholders. The practical application of the bill is that Touch America remains a party, and the other defendants remain a party; officers and directors of the Montana Power Company, Millbank Tweed Law Offices, Golden Sacs, et al. The only entity affected by this bill is Northwestern Corporation.

**{Tape: 1; Side: A; Approx. Time Counter: 256 - 371}**

**John Fitzpatrick, Northwestern Energy**, provided written testimony and also distributed a chart on Montana Power Divestiture.

**EXHIBIT (buh75a01)**

**EXHIBIT (buh75a02)**

**{Tape: 1; Side: A; Approx. Time Counter: 371 - Tape: 1; Side: B; Approx. Time Counter: 33}**

**Ross Richardson, Attorney at Law, Butte**, said talk of bankruptcy should be dismissed. Bankruptcy is not good news for the utility, people who work for the utility, and the businesses and creditors of the entity. The ultimate goal of Chapter 11 is to design a plan that can be agreed upon by creditors, and proposed and confirmed by a bankruptcy judge. Bankruptcy has a real and substantial affect on a lot of entities including the debtor, its employees, and the businesses that work with it.

**{Tape: 1; Side: B; Approx. Time Counter: 33 - 132}**

**Dan Flynn, International Brotherhood of Electrical Workers, Local 44, Butte,** said they support this bill.

*{Tape: 1; Side: B; Approx. Time Counter: 132 - 141}*

**Evan Barrett, Butte Local Development Corporation,** said this bill is about three words; fairness, economics and choice.

*{Tape: 1; Side: B; Approx. Time Counter: 141 - 156}*

**Bob Pavlovich, International Brotherhood of Electrical Workers, Local 233, Butte,** said he has members of his organization who work for Northwestern Energy and wish to support this legislation.

*{Tape: 1; Side: B; Approx. Time Counter: 156 - 161}*

**Judy Jacobson, Chief Executive, Butte Silverbow,** said it was a difficult decision for her to come here because they have several shareholders and retirees who have been hurt because of the loss of Montana Power Company. There is uncertainty and instability in Butte.

*{Tape: 1; Side: B; Approx. Time Counter: 161 - 172}*

**Candace Payne, Colstrip Limited Partnership,** said they are in favor of any legislation that will help prevent the bankruptcy of any company.

*{Tape: 1; Side: B; Approx. Time Counter: 172 - 181}*

**Bob Nelson, Montana Consumer Counsel,** said they represent the interests in the State of Montana. This bill provides protection for both the ratepayers and the public utilities regulated by the Commission.

*{Tape: 1; Side: B; Approx. Time Counter: 181 - 206}*

**Webb Brown, Montana Chamber of Commerce,** said they support this bill. The responsibility should go with the control and not with the assets.

*{Tape: 1; Side: B; Approx. Time Counter: 206 - 210}*

**Jim Kambich, Vice President, Montana Energy Research Development Institute, Butte,** said they have renovated the Galen facility, and created 125 jobs.

*{Tape: 1; Side: B; Approx. Time Counter: 210 - 222}*

**Carl Maehl, Montana Power Company Retiree,** said he was concerned about bankruptcy of Northwestern Energy. He said they were not a part of this lawsuit.

*{Tape: 1; Side: B; Approx. Time Counter: 222 - 231}*

**Rhonda Carpenter, Great Falls Area Chamber of Commerce**, said the passage of this bill will assist in stabilizing the company and attract portable electricity.

**{Tape: 1; Side: B; Approx. Time Counter: 231 - 239}**

**Opponents' Testimony:**

**Allan McGarvey, Montana Power Company, Shareholder**, said the Montana Power Company was a legal person. He provided written testimony and a letter from Kristen G. Juras.

**EXHIBIT (buh75a03)**

**EXHIBIT (buh75a04)**

**{Tape: 1; Side: B; Approx. Time Counter: 239 - Tape: 2; Side: A; Approx. Time Counter 84}**

**Susan Good, Shareholder**, explained the changes in the bill and also supplied testimony regarding the Montana Power Company entitled, The Merger and a list of shareholders which also contained the amount of shares they lost with the merger.

**EXHIBIT (buh75a05)**

**EXHIBIT (buh75a06)**

**{Tape: 2; Side: A; Approx. Time Counter: 84 - 213}**

**Tom Ferkovich, Whitehall resident**, said he lost all of his retirement in the transition.

**{Tape: 2; Side: A; Approx. Time Counter: 213 - 225}**

**Joe Micheletti, Stockholder, representing himself**, told of how he had been treated by Northwestern Energy as a user of public utilities.

**{Tape: 2; Side: A; Approx. Time Counter: 225 - 233}**

**Marsha McBeth, representing herself**, said she was a previous employee of Montana Power Company.

**{Tape: 2; Side: A; Approx. Time Counter: 233 - 238}**

**Al Smith, Montana Trial Lawyers Association**, opposes this bill.

**{Tape: 2; Side: A; Approx. Time Counter: 238 - 240}**

**Joe Martelli, Montana Power Company stockholder**, said he opposes this bill.

**{Tape: 2; Side: A; Approx. Time Counter: 240 - 248}**

**Joanne Sherwood, representing herself**, opposes this bill.

**{Tape: 2; Side: A; Approx. Time Counter: 248 - 249}**

**Dwight DeHood, Chairman, Bill of Rights Committee, Constitutional Convention,** opposes this bill.

**{Tape: 2; Side: A; Approx. Time Counter: 249 - 254}**

**Informational Testimony:**

**Tom Schneider, Vice Chairman, Public Service Commission,** said he was available to answer questions.

**{Tape: 2; Side: A; Approx. Time Counter: 254 - 263}**

**Scott Steen, representing himself,** said if Northwestern Energy went bankrupt, would there not be pensions accrued from the former Montana Power employees' retirement funds to begin retirement payments to its employees.

**{Tape: 2; Side: A; Approx. Time Counter: 263 - 276}**

**Dale McGarvey,** presented testimony from Northwestern Energy. It included their second quarter report for June 2002.

**EXHIBIT (buh75a07)**

**{Tape: 2; Side: A; Approx. Time Counter: 276 - 283}**

**Questions from Committee Members and Responses:**

**REP. GALLIK** asked Mr. Fitzpatrick if the rumors were true regarding Northwestern Energy and filing for bankruptcy. **Mr. Fitzpatrick** said Northwestern has some very difficult financial circumstances at the present time. It is \$2.2 million in debt. The risk the company faces now is if it is hit with another large judgment it could be pushed into the condition of complete financial insolvency resulting in bankruptcy or a reorganization plan.

**{Tape: 2; Side: A; Approx. Time Counter: 283 - 424}**

**REP. KEANE** asked SEN. SHEA to address the Committee. **SEN. SHEA, SD 18, Butte Silverbow,** said she did not find fault with the lawsuit itself. She said she wanted the shareholders to recoup their loss. She has three compelling reasons to help the shareholders and they were workers, community and company.

**{Tape: 2; Side: A; Approx. Time Counter: 427 - 499}**

**REP. KEANE** asked if SEN. ROUSH, SD 43, Cut Bank had a conflict of interest in this bill. **REP. KEANE** said he would be very concerned if Northwestern Energy did file for bankruptcy. **SEN. ROUSH** believes in the company. This bill is a special interest bill. For the benefit of Montana people, he will support this bill.

**{Tape: 2; Side: B; Approx. Time Counter: 1 - 89}**

**REP. BOOKOUT-REINICKE** asked Mr. Schneider if the shareholders ended up owning the company, wouldn't they come to the Public Service Commission to request a rate increase. **Mr. Schneider** said there is no doubt they would want ratepayers to support that with increased rates.

*{Tape: 2; Side: B; Approx. Time Counter: 89 - 187}*

**REP. MORGAN** asked Mr. McGarvey when was Touch America was served in this lawsuit. **Mr. McGarvey** said Touch America was originally served in the beginning when Montana Power Company was served.

*{Tape: 2; Side: B; Approx. Time Counter: 187 - 283}*

**REP. BITNEY** asked Mr. Fitzpatrick if Touch America had been served. **Mr. Fitzpatrick** said he did not share Mr. McGarvey's explanation. The initial service was on the Montana Power Company, and Touch America was still a subsidiary company.

*{Tape: 2; Side: B; Approx. Time Counter: 283 - 306}*

**REP. MAEDJE** asked Mr. Berry when the business legacies would be transferred. **Mr. Berry** said when the merger took place, Montana Power Company LLC was purchased by Northwestern. There was a list of lawsuits that were pending against the Montana Power Company. Those were agreed upon by Northwestern Energy and Touch America when it was purchased.

*{Tape: 2; Side: B; Approx. Time Counter: 306 - 367}*

**REP. WEISS** asked Mr. Berry to explain the term "wire and poles." **Mr. Berry** said the original Montana Power Company sold off the assets and the only thing remaining were the wires and poles.

*{Tape: 2; Side: B; Approx. Time Counter: 367 - 461}*

**REP. GALLIK** asked Mr. Berry if Northwestern Energy was aware of the lawsuit. **Mr. Berry** said they were aware of the lawsuit.

*{Tape: 2; Side: B; Approx. Time Counter: 461 - 500}*

**REP. GALVIN-HALCRO** asked Mr. Berry who the original defendants were in the lawsuit. **Mr. Berry** said the lawsuit was still against the original Plaintiffs and that would be the Montana Power Company.

*{Tape: 3; Side: A; Approx. Time Counter: 1 - 223}*

**REP. MENDENHALL** asked Mr. Berry about the time of the transfer from Montana Power to Montana Power LLC, there was a balance sheet that was a part of the sale. There were some lawsuits listed and this particular one was not listed. **Mr. Berry** said that was correct.

**Closing by Sponsor:**

The Sponsor closed.

***{Tape: 3; Side: A; Approx. Time Counter: 223 - 465}***

**ADJOURNMENT**

Adjournment: 11:45 A.M.

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REP. JOE MCKENNEY, Chairman

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ALBERTA STRACHAN, Secretary

JM/AS

**EXHIBIT** (buh75aad)